

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4564 of 1998

with

SPECIAL CIVIL APPLICATION No 3092 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

YAKUBBHAI MUSABHAI PATEL

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR. H. K. RATHOD for respondent

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/07/98

ORAL JUDGEMENT

#. Rule. Mr.H.K.Rathod, learned advocate for respondent waives service of rule in S.C.A No.4564/98 and Mrs.Vasavdatta Bhatt, learned advocate for the petitioner waives service of rule in S.C.A.No.3092/98.

#. The Gujarat State Road Transport Corporation has filed the present petition to challenge the award passed

by the labour court of Baroda in Reference No.11/97 dated 6-10-1997. The respondent Yakubbbhai Mussabhai Patel was working as driver in the Baroda division of the present petitioner. When he was attached to Baroda Depot, he remained absent and didn't report on his duty from 15-2-93 to 28-2-93 and again 1-3-93 to 27-3-93. As he has remained unauthorisedly absent from his duty, a show cause notice was issued to him to show cause why action should not be taken against him and thereafter a departmental proceeding was initiated against him for the said misconduct. In the departmental inquiry it was found that misconduct alleged against him was proved, consequently he was held guilty of said misconduct. Thereafter the petitioner issued an order on 2-7-93 dismissing him from service. It seems that after the said dismissal order, the respondent didn't take any action for atleast nearly 2 years and thereafter he raised an industrial dispute regarding his dismissal from service, and consequently reference was made on 28-12-95 to the labour court of Baroda. In the said proceeding before the labour court the validity and legality of departmental inquiry was not challenged. Similarly the remaining of the absent from duty was also not disputed. The only point was urged was urge for quantum of punishment. The labour court found that even accepting the claim of the employer, that he had not produced the medical certificate to show as to why he has remained absent from duty, the order of dismissal from service was not called for. The labour court found that initially he had produced the medical certificate and obtained leave for 7 days and then continued to remain absent from his duty. The labour court also took into consideration that the driver had tried to explain his absence by his saying that he was not keeping good health and therefore in the circumstances, merely because he was absent from his duty, dismissal from service was not called for. He therefore held that order of dismissal must be interfered with by exercising the discretionary powers under Section-11 A of Industrial Disputes Act. He then held that in view of the charge levelled against him and proved against him, he should be awarded punishment of denial of 40 % of wages and stoppage of 1 increment. He therefore directed to reinstate the driver 60 % backwages and stoppage of 1 increment.

#. The employer felt aggrieved by the said decision and has come before this court by this petition. Though the employer had contended in their written statement that the order of punishment of dismissal was on account of previous service history of the employee. The service history sheet was not produced before the labour court.

The labour court has taken into consideration that initially he had produced the medical certificate and it was also the claim of the workman that he was ill and he had sent a medical certificate. Therefore taking into consideration these circumstances, the labour court found that the order of dismissal from service was not justified. Thus, the said finding is recorded by the labour court in view of the appreciation of material on record and I am unable to hold that the said finding or said conclusion arrived at the labour court is either perverse or grossly erroneous so to interfere with the same by exercising the powers under Article 226 & 227 of the Constitution of India. Mere absence from duty for some days, and that too initially producing Doctor's certificate and obtaining leave, on account of illness. It is very difficult to uphold the claim of the dismissal from service as alleged by the Corporation.

#. No doubt, the labour court has also found that the charge of remaining absent from the duty has been proved. The labour court has also recorded the finding that the punishment of dismissal was not justified. The labour court awarded the punishment of denial of 40 % wages and stoppage of 1 increment but the labour court has lost sight of one circumstance viz. that the order of dismissal was passed on 2nd July, 1993 and the workman has raised the industrial dispute after more than 2 years. It is not quite clear from the record before me that as on what exact date the dispute was raised by the workman. But one thing is quite clear that the reference is made on 20th December, 1995. Therefore taking into consideration the reasonable time spent in making reference. There is no difficulty in upholding that the industrial dispute was raised by the respondent after more than 2 years from the date of dismissal. Therefore, in the circumstances, taking into consideration these lapses on the part of the workman, I hold that the workman should not be allowed to take benefit of his lapses by allowing backwages of the said period of 2 years. Therefore I will interfere with the order of punishment passed by the labour court by holding that the respondent workman should be reinstated with 60 % backwages from 3-7-95 with continuity in service and with stoppage of 1 increment. Thus this present petition is partly allowed as indicated above. The SCA No.3092 of 1998 filed by the workman respondent is for the implementation of the said award. As per the award modified by this court today, the Corporation should implement the award within 4 weeks from today and as regards the backwages, they should be paid within 8 weeks from today. Thus, Special Civil Application No.4564/1998

and Spl.Civil Application No.3092/98 also stand disposed
of with no order as to cost. Rule is made absolute.

Date : 7-7-1998 (S.D.Pandit, J.)

(KPP)